

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Chris Langer,

Plaintiff,

v.

Ennabe Properties, Inc., a
California Corporation; and Does 1-
10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Chris Langer complains of Defendants Ennabe Properties, Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility. He has a specially equipped van with a ramp that deploys out of the passenger side of his van and he has a Disabled Person Parking Placard issued to him by the State of California.

1 2. Defendant Ennabe Properties, Inc., owned the property (“Pay Parking
2 Lot”) located at or about 4135 Market Street, Riverside, California, in August
3 2015.

4 3. Defendant Ennabe Properties, Inc., owns the property (“Pay Parking
5 Lot”) located at or about 4135 Market Street, Riverside, California, currently.

6 4. Plaintiff does not know the true names of Defendants, their business
7 capacities, their ownership connection to the property and business, or their
8 relative responsibilities in causing the access violations herein complained of,
9 and alleges a joint venture and common enterprise by all such Defendants.
10 Plaintiff is informed and believes that each of the Defendants herein,
11 including Does 1 through 10, inclusive, is responsible in some capacity for
12 the events herein alleged, or is a necessary party for obtaining appropriate
13 relief. Plaintiff will seek leave to amend when the true names, capacities,
14 connections, and responsibilities of the Defendants and Does 1 through 10,
15 inclusive, are ascertained.

16
17 **JURISDICTION & VENUE:**

18 5. This Court has subject matter jurisdiction over this action pursuant to
19 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
20 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

21 6. Pursuant to supplemental jurisdiction, an attendant and related cause
22 of action, arising from the same nucleus of operative facts and arising out of
23 the same transactions, is also brought under California’s Unruh Civil Rights
24 Act, which act expressly incorporates the Americans with Disabilities Act.

25 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
26 founded on the fact that the real property which is the subject of this action is
27 located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

8. The Plaintiff went to the Pay Parking Lot in August 2015 to park.

9. The Pay Parking Lot is a facility open to the public, a place of public accommodation, and a business establishment.

10. Parking spaces are one of the facilities, privileges and advantages specifically reserved by defendants to persons at the property serving the Pay Parking Lot.

11. Unfortunately, although parking spaces were one of the facilities available to patrons of the Pay Parking Lot, there was not a single compliant van-accessible handicap parking space available for persons with disabilities that complied with the Americans with Disability Act Accessibility Guidelines (ADAAG) in August 2015.

12. Currently, there are no compliant accessible parking space designed and reserved for persons with disabilities in the parking lot serving the Pay Parking Lot.

13. Plaintiff, on information and belief, alleges that there used to be an accessible parking space designed and reserved for persons with disabilities on the property prior to August 2015.

14. Indeed, there are remnants of an old parking space that appears to have once been reserved for persons with disabilities. The parking space has long since faded to the point where it is no longer reserved for persons with disabilities.

15. The parking lot has been restriped and paint now covers part of the parking space where the old, accessible parking space used to exist.

16. There is also no pole mounted or wall mounted signage in front of the parking space that was once reserved for persons with disabilities.

17. Defendants had no policy or procedure in place to make sure that the accessible parking space was maintained and remained useable in the Pay

1 Parking Lot in August 2015.

2 18. Defendants have no policy or procedure in place to make sure that the
3 accessible parking space remains useable in the Pay Parking Lot currently.

4 19. As a result of not being able to park at this property, plaintiff had to go
5 to another location in the area. Plaintiff was able to park at another parking
6 lot nearby.

7 20. The plaintiff personally encountered this problem. This inaccessible
8 condition denied the plaintiff full and equal access and caused him difficulty
9 and frustration.

10 21. Plaintiff would like to return and patronize the Pay Parking Lot but will
11 be deterred from visiting until the defendants cure the violation.

12 22. Plaintiff travels, eats, and shops in Riverside County on a regular and
13 ongoing basis.

14 23. Because of the location of the Pay Parking Lot, plaintiff would like to
15 return.

16 24. The defendants have failed to maintain in working and useable
17 conditions those features required to provide ready access to persons with
18 disabilities.

19 25. The violations identified above are easily removed without much
20 difficulty or expense. They are the types of barriers identified by the
21 Department of Justice as presumably readily achievable to remove and, in
22 fact, these barriers are readily achievable to remove. Moreover, there are
23 numerous alternative accommodations that could be made to provide a
24 greater level of access if complete removal were not achievable.

25 26. Given the obvious and blatant violation, the plaintiff alleges, on
26 information and belief, that there are other violations and barriers on the site
27 that relate to his disability. Plaintiff will amend the complaint, to provide
28 proper notice regarding the scope of this lawsuit, once he conducts a site

1 inspection. However, please be on notice that the plaintiff seeks to have all
 2 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034
 3 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
 4 he can sue to have all barriers that relate to his disability removed regardless
 5 of whether he personally encountered them).

6 27. Additionally, on information and belief, the plaintiff alleges that the
 7 failure to remove these barriers was intentional because: (1) these particular
 8 barriers are intuitive and obvious; (2) the defendants exercised control and
 9 dominion over the conditions at this location and, therefore, the lack of
 10 accessible facilities was not an “accident” because had the defendants
 11 intended any other configuration, they had the means and ability to make the
 12 change.

13
 14 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 15 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
 16 defendants (42 U.S.C. section 12101, et seq.)

17 28. Plaintiff repleads and incorporates by reference, as if fully set forth
 18 again herein, the allegations contained in all prior paragraphs of this
 19 complaint.

20 29. Under the ADA, it is an act of discrimination to fail to ensure that the
 21 privileges, advantages, accommodations, facilities, goods and services of any
 22 place of public accommodation is offered on a full and equal basis by anyone
 23 who owns, leases, or operates a place of public accommodation. See 42
 24 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 25 a. A failure to make reasonable modifications in policies, practices,
 26 or procedures, when such modifications are necessary to afford
 27 goods, services, facilities, privileges, advantages, or
 28 accommodations to individuals with disabilities, unless the

1 accommodation would work a fundamental alteration of those
2 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

3 b. A failure to remove architectural barriers where such removal is
4 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
5 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
6 Appendix “D.”

7 c. A failure to make alterations in such a manner that, to the
8 maximum extent feasible, the altered portions of the facility are
9 readily accessible to and usable by individuals with disabilities,
10 including individuals who use wheelchairs or to ensure that, to
11 the maximum extent feasible, the path of travel to the altered
12 area and the bathrooms, telephones, and drinking fountains
13 serving the altered area, are readily accessible to and usable by
14 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

15 30. Any business that provides parking spaces must provide accessible
16 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
17 every eight of those accessible parking spaces but not less than one must be a
18 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991
19 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six
20 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

21 31. Here, the lack of an accessible parking space is a violation of the law.

22 32. A public accommodation must maintain in operable working condition
23 those features of its facilities and equipment that are required to be readily
24 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

25 33. Here, the failure to ensure that the accessible facilities were available
26 and ready to be used by the plaintiff is a violation of the law.

27 34. Given its location and options, plaintiff will continue to desire to
28 patronize the Pay Parking Lot but he has been and will continue to be

1 discriminated against due to the lack of accessible facilities and, therefore,
2 seeks injunctive relief to remove the barriers.

3
4 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
5 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
6 51-53)

7 35. Plaintiff repleads and incorporates by reference, as if fully set forth
8 again herein, the allegations contained in all prior paragraphs of this
9 complaint.

10 36. Because the defendants violated the plaintiffs' rights under the ADA,
11 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
12 Code § 51(f), 52(a).)

13 37. Because the violation of the Unruh Civil Rights Act resulted in
14 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
15 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
16 55.56(a)-(c).)

17
18 **PRAYER:**

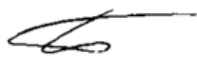
19 Wherefore, Plaintiff prays that this court award damages and provide
20 relief as follows:

21 1. For injunctive relief, compelling defendants to comply with the
22 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
23 Plaintiff is not invoking section 55 of the California Civil Code and is not
24 seeking injunctive relief under the Disabled Persons Act at all.

25 2. Damages under the Unruh Civil Rights Act which damages provide for
26 actual damages and a statutory minimum of \$4,000.

1 3. Reasonable attorney fees, litigation expenses and costs of suit,
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

3
4 Dated: December 22, 2015 CENTER FOR DISABILITY ACCESS

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6 By: 
7 Mark Potter, Esq.
8 Attorneys for Plaintiff
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